

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0176045 CAF**

CHRISTOPHER SCHMITT,
Complainant

v.

CRUISER RV, INC.,
Respondent

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Christopher Schmitt (Complainant) filed a complaint with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) and/or Texas Occupations Code § 2301.204 (Warranty Performance) for alleged warrantable defects in his recreational vehicle (RV) manufactured by Cruiser RV, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect that creates a serious safety hazard or substantially impairs the vehicle's use or market value after a reasonable number of repair attempts. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement or warranty repair.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on November 9, 2017, in Fort Worth, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for himself; his spouse, Rebekka Schmitt, and father, Donald Schmitt, also testified for the Complainant. Ian Roberts, Consumer Affairs Manager, represented and testified for the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief

A vehicle qualifies for repurchase or replacement if the manufacturer cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”² In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must continue to exist after a “reasonable number of attempts” at repair.³ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a mailed written notice of the defect to the manufacturer, (2) an opportunity to repair by the manufacturer, and (3) a deadline for filing a Lemon Law complaint.

a. Serious Safety Hazard

The Lemon Law defines “serious safety hazard” as a life threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.⁴

b. Substantial Impairment of Use or Value

i. Impairment of Use

In determining substantial impairment of use, the Department considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle.” For instance, “while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁵

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

⁵ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

ii. Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard “does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value.” Instead, under this standard, “factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.”⁶

c. Reasonable Number of Repair Attempts

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁷

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁸

Additionally, for vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“[T]he Division’s interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute’s goal of mitigating manufacturers’ economic advantages in warranty-related disputes.”).

⁷ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

⁸ TEX. OCC. CODE § 2301.605(a)(2).

[A] nonconformity still exists that substantially impairs the vehicle's use or market value, the vehicle is out of service for repair for a cumulative total of 30 or more days, and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁹

The 30 days described above does not include any period when the owner has a comparable loaner vehicle provided while the dealer repairs the subject vehicle.¹⁰

The existence of a statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.¹¹ Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.¹²

d. Other Requirements

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner, someone on behalf of the owner, or the Department provided written notice of the alleged defect or nonconformity to the manufacturer;¹³ (2) the manufacturer was given an opportunity to cure the defect or nonconformity;¹⁴ and (3) the Lemon Law complaint was filed within six months after the earliest

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ TEX. OCC. CODE § 2301.605(c).

¹¹ *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ) (“[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite ‘reasonable number of attempts.’”).

¹² *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication) (Repair attempts include “those occasions when the fault for failing to repair the vehicle rests with the dealership.” Conversely, “those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.”).

¹³ TEX. OCC. CODE § 2301.606(c)(1).

¹⁴ TEX. OCC. CODE § 2301.606(c)(2). A repair visit to a dealer can satisfy the “opportunity to cure” requirement if the manufacturer authorized repairs by the dealer after written notice to the manufacturer, i.e., the manufacturer essentially authorized the dealer to attempt the final repair on the manufacturer’s behalf. See *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.¹⁵

2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a "defect . . . that is covered by a manufacturer's, converter's, or distributor's . . . warranty agreement applicable to the vehicle" and the vehicle owner notified the manufacturer, converter, distributor, or its authorized agent of the defect.¹⁶ The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."¹⁷

3. Burden of Proof

The law places the burden of proof on the Complainant.¹⁸ The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present sufficient evidence to show that each required fact is more likely than not true.¹⁹ If any required fact appears equally likely or unlikely, then the Complainant has not met the burden of proof.

4. The Complaint Identifies the Issues in this Proceeding

The complaint identifies the issues to be addressed in this proceeding.²⁰ The complaint should state "sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law."²¹ However, the parties may expressly or impliedly consent

¹⁵ TEX. OCC. CODE § 2301.606(d)(2).

¹⁶ TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202(b)(3).

¹⁷ TEX. OCC. CODE § 2301.603(a).

¹⁸ 43 TEX. ADMIN. CODE § 215.66(d).

¹⁹ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

²⁰ "In a contested case, each party is entitled to an opportunity . . . for hearing after reasonable notice of not less than 10 days." TEX. GOV'T CODE §§ 2001.051; "Notice of a hearing in a contested case must include . . . a short, plain statement of the factual matters asserted." TEX. GOV'T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) ("The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty."); TEX. OCC. CODE § 2301.204(d) ("A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.").

²¹ 43 TEX. ADMIN. CODE § 215.202(a)(2).

to trying issues not included in the pleadings.²² Implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²³

A. Complainant's Evidence and Arguments

On November 5, 2016, the Complainant, purchased a new 2017 MPG 2790DB from Fun town RV, an authorized dealer of the Respondent, in Cleburne, Texas. The vehicle's limited warranty provides coverage for one year. On May 25, 2017, the Complainant provided a written notice of defect to the Respondent. On May 13, 2017, the Complainant filed a complaint with the Department alleging that the fiberglass delaminated on the driver side, rear, and passenger side; and the ceiling wallpaper buckled. On November 6, 2017, the Complainant submitted an amended complaint to the Lemon Law Section of the Enforcement Division but did not file the amended complaint with the Office of Administrative Hearings. The amended complaint alleged variety of damage occurring during repair or during the transport of the vehicle to or from repair, including: broken door hinge by bunkbeds during delamination repair; gouged and scratched awning bar during delamination repair; awning wires not properly secured, coming unsewn, improperly installed; jack foot removed during delamination repair; ends of bumpers removed/lost during delamination repair; screws not replaced on wheel well (driver side) and over door by bunks during delamination repair; grease on bed during repairs at manufacturer; underbelly sagging, not properly secured; unsecured wires (passenger side front of wheels) at manufacturer or transit to/from manufacturer; poor sealing on exterior, gaps, poorly seated vents from delamination repair; trim poorly reinstalled; AC cover broken after return from manufacturer, blinds broken from window left open; exposed nail/assembly of the entertainment system; break-away cable broken after return from manufacturer; rubber gasket/jack cover disintegrating; and backrest torn when at the manufacturer.

The Complainant confirmed that the ceiling wallpaper appeared to have been successfully repaired, leaving the fiberglass delamination, post-repair issues, and the rubber gasket/jack cover to be addressed here. The Complainant testified that the fiberglass delamination was repaired but had sections cut out and had divots. He did not find the delamination repair satisfactory. He saw

²² 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

²³ See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref'd).

what appeared to be sections of the wall cut out and repaired. Moreover, during the repairs of the RV, the RV was damaged and some parts were reinstalled poorly. The Complainant affirmed that dealer had negligently repaired the vehicle, leaving broken parts and broken windows. In addition to the delamination, the roof was repaired at the factory. The awning was replaced at the dealer and again at the factory. The awning appears to require replacement again because of negligent reinstallation. When asked if the Complainant provided a second notice letter (for the amended issues), he explained that he had just submitted the amendment through the Lemon Law Section. The Complainant testified that the roof had been satisfactorily repaired and that all of the roof material had been changed. He noted that none of the initial issues involved the jack foot, so he did not know why it was removed. The initial issue was a rip in the awning. However, a technician noticed the wallpaper coming loose. He pointed out that one of the main issues was the bunk door, which was an emergency escape. The bunk door's hinge was bent but riveted into the frame. He added that he had to clean up water that collected in the RV. The door had a gap and the factory did a poor job of sealing the RV. Mrs. Schmitt interjected that the bunk door was a safety issue, since their children slept in the bunk. The Complainant elaborated that the silicone did not adhere around the slide and left a large gap. The fender on the driver's side had two or three screws that were not reinstalled and the bumper was left without end caps. The technicians left grease on a mattress and on the top bunk and otherwise left debris all over the RV. He also found white clips from the AC vent under the table. The trim in the bathroom was not seated correctly, which may allow water to get behind the shower wall. A vent cover was broken another vent did not have a cover and had insulation exposed. A window had been left open, damaging the blinds. Fabric was pulled away from the blinds. A plastic piece holding wiring in the awning was not seated correctly and insulation around the wires was bent. The stove vent was not seated correctly. The break-away cable was frayed sometime in Indiana. A nail was popping through and the wood at the entertainment center was pulling away. The blinds at the kitchen table and over the couch were bowing and only secured by two small screws. The delamination repair appears to be in two pieces. The refrigerator was left unplugged at the manufacturer. The hot water was turned off at the factory. The Complainant was supposed to be receive replacements for the missing bumper caps but he was still waiting for them. Upon receiving the RV back from the manufacturer's repair, the divider between the table and couch was ripped. The Complainant added that when the delivery driver came for the RV, he did not attach the break-away cable. Although the items on the

(original) problems log was fixed to a satisfactory level, after repair, the RV came back with other problems.

B. Respondent's Evidence and Arguments

Mr. Roberts pointed out that the RV's walls were replaced as single (laminated) pieces. However, the wall substrate is four feet by eight feet, which gave the appearance of entirely separate sections of wall. He explained that the entertainment center was not assembled at the Respondent's factory but was received as one piece and installed before installing the ceiling. He noted that the slide needed adjustment but this was a maintenance issue. Mr. Roberts noted that the emergency brake (break-away) cable issue may have been caused by the transport company's driver since the transport company would have utilized it during transport. He added that missing bumper end caps is not uncommon given the distance of transport. The AC filter covers are normally taken down for transport to avoid falling and breaking. The Respondent should have removed the covers before shipping the RV back. Much of the issues could have been resolved sooner but the original complaint issues have been addressed. Mr. Roberts could not speak on the other issues because the RV was taken to the factory only for the ceiling and wall panels.

C. Inspection

Inspection of the subject vehicle at the hearing showed: the plastic range hood vent pulling away, sealant gapping, a loose wire cover, rubber pieces on the trailer hitch jack had deteriorated, loose tarp-like material under the front of the RV, wire insulation crimped on the awning arm, missing fender screws, bent exterior bunk door hinges and missing screw, corner trim piece in the shower cut too long leaving a gap, dining room blinds not secured at the top, broken AC cover, exposed staple in the entertainment center, stains on the mattresses, and a slight underbelly sag at the rear and front. The awning rolled out and in normally.

D. Analysis

The subject vehicle clearly has extensive problems. However, the Lemon Law does not apply to all problems that may occur with a vehicle, but only applies to defects covered by warranty

(warrantable defects).²⁴ In the present case, the RV does not have any currently existing defects that qualify for Lemon Law relief.

If the manufacturer's warranty does not cover the complained of condition, the Lemon Law does not provide any relief. The Lemon Law does not require that a manufacturer provide any particular warranty coverage nor does the Lemon Law specify any standards for vehicle characteristics. The Lemon Law only requires the manufacturer to conform its vehicles to whatever coverage the warranty provides. Consequently, to qualify for replacement or repurchase or for warranty repair, the vehicle must have a defect covered by warranty.²⁵ In relevant part, the manufacturer warrants that:

[T]he recreational vehicle manufactured and assembled by Cruiser RV shall be free from defects in material and/or workmanship supplied and attributable to Cruiser RV in the construction of the recreational vehicle. "Defect" means the failure of the unit and/or the materials used to assemble the unit to conform to Cruiser's design and manufacturing specifications and tolerances.²⁶

According to these terms, the warranty only applies to defects in materials or workmanship (manufacturing defects).²⁷ A manufacturing defect is an isolated aberration occurring only in those vehicles not produced according to the manufacturer's specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. Manufacturing defects exist when the vehicle leaves the factory. Unlike manufacturing defects, issues that do not arise from manufacturing, such as characteristics of the vehicle's design²⁸ (which exists before manufacturing) or improper repairs (which occur after

²⁴ TEX. OCC. CODE § 2301.603(a).

²⁵ TEX. OCC. CODE § 2301.604(a); TEX. OCC. CODE § 2301.204.

²⁶ Complainant's Ex. 3, Cruiser RV Limited One (1) Year Warranty.

²⁷ Courts have affirmed that warranty language covering "defects in material or workmanship" do not cover design issues. *E.g., Whitt v. Mazda Motor of America*, 5th Dist. Stark No. 2010CA00343, 211-Ohio-3097, ¶¶ 18-21 ("The manufacturer's express warranty in the case sub judice provides: 'Mazda warrants that your new Mazda Vehicle is free from defects in material or workmanship' The trial court found the warranty did not cover claims of design defects. . . . The problems about which Appellants complained did not fall within the applicable expressed warranty."); *see GT & MC, Inc. v. Texas City Refining, Inc.*, 822 S.W.2d 252, 257 (Tex. App.—Houston [1st Dist.] 1991, writ denied) ("the language in the contract of May 12, 1980, expressly limited TCR's recovery only for defects in materials or workmanship to damages for repair or replacement value. No mention was made in the guarantee of remedies for design defects.").

²⁸ Design characteristics result from the vehicle's specified design and not from any error during manufacturing. *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

manufacturing) are not warrantable defects. Accordingly, the warranty only covers defects that occur during the manufacture of the vehicle. Additionally, the warranty specifically excludes, a variety of items, including but not limited to:

Additional components which have been installed in the recreational vehicle, including but not limited to microwave ovens, ranges, refrigerators, leveling jacks, furnaces/heaters, DVD/CD players, air conditioning, icemakers, vacuum cleaners, televisions, hot water heaters, generators, power converters, batteries, and other items not specifically manufactured by Cruiser RV, are warranted by the component manufacturers as detailed in their individual manufacturers' warranties, and are not covered by this Limited Warranty. Copies of the warranties may be found in the product owners packet or by contacting Cruiser RV. . . . Normal deterioration due to wear or exposure, such as fading of fabrics or drapes, carpet wear, exterior surfaces, etc. Maintenance items: such as light bulbs, fuses, lubricants, minor adjustments. . . . Transportation to and from dealer or manufacturing plant locations for any purpose, including but not limited to warranty purposes. . . . Environmentally caused conditions such as rust, or sealant deterioration.

In sum, to qualify for Lemon Law relief, the issue must be a manufacturing defect and must not be excluded by the warranty. In this case, a preponderance of the evidence does not show that vehicle has an existing defect covered by warranty.

1. Original Complaint Issues

The record reflects that the two original complaint issues, buckling ceiling wallpaper and fiberglass wall delamination, were successfully repaired. The Complainant confirmed that the ceiling issue was resolved and that the delaminating walls were repaired. Although the Complainant initially had an issue with the walls apparently being replaced in four foot sections, the evidence shows that the walls were replaced as entire individual walls, although the 4'x8' sections of wall substrate within the individual walls may have given the appearance that the wall was replaced in four foot sections of wall. Accordingly, the original complaint issues do not support granting of any relief.

2. Amended Complaint Post-Repair Issues

The vast majority of post-repair issues relate to problems resulting from repairs occurring after the vehicle was manufactured. As explained in the discussion of the warranty, the warranty only applies to manufacturing defects, which arise from the manufacture of the vehicle and exist when the vehicle leaves the assembly line. However, issues caused by repairs occurring after the

manufacture of the vehicle are not warranted defects. Moreover, the remaining issues not caused by the repairs are also not warrantable defects. The problems caused during the transport of the RV to and from the repair visit are not defects occurring during manufacturing and therefore are not warranted. With regard to the exposed nail (staple) in the entertainment center, the record shows that a third party manufactured/assembled the entertainment center, so any defect in the entertainment center is not a warranted manufacturing defect, i.e., the issue is not due to the Respondent's manufacturing. Finally, a preponderance of the evidence does not show that the deteriorating rubber cover over the jack is a warrantable defect. The warranty specifically excludes "[n]ormal deterioration due to wear or exposure" and "[e]nvironmentally caused conditions." Additionally, although the cover's durability may be less than desired, any deficiencies in the cover's design (e.g., the specified material composition) is by definition not a manufacturing defect.

III. Findings of Fact

1. On November 5, 2016, the Complainant, purchased a new 2017 MPG 2790DB from Fun town RV, an authorized dealer of the Respondent, in Cleburne, Texas.
2. The vehicle's limited warranty provides coverage for one year.
3. On May 25, 2017, the Complainant provided a written notice of defect to the Respondent.
4. On May 13, 2017, the Complainant filed a complaint with the Department alleging that the fiberglass delaminated on the driver side, rear, and passenger side; and the ceiling wallpaper buckled. On November 6, 2017, the Complainant submitted an amended complaint to the Lemon Law Section of the Enforcement Division but did not file the amended complaint with the Office of Administrative Hearings. The amended complaint alleged variety of damage occurring during repair or during the transport of the vehicle to or from repair, including: broken door hinge by bunkbeds during delamination repair; gouged and scratched awning bar during delamination repair; awning wires not properly secured, coming unsewn, improperly installed; jack foot removed during delamination repair; ends of bumpers removed/lost during delamination repair; screws not replaced on wheel well (driver side) and over door by bunks during delamination repair; grease on bed during repairs at manufacturer; underbelly sagging, not properly secured; unsecured wires

(passenger side front of wheels) at manufacturer or transit to/from manufacturer; poor sealing on exterior, gaps, poorly seated vents from delamination repair; trim poorly reinstalled; AC cover broken after return from manufacturer, blinds broken from window left open; exposed nail/assembly of entertainment system; break-away cable broken after return from manufacturer; rubber gasket/jack cover disintegrating; and backrest torn when at the manufacturer. The wallpaper issue was successfully resolved prior to the hearing.

5. On August 31, 2017, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the factual matters asserted.
6. The hearing in this case convened on November 9, 2017, in Fort Worth, Texas, before Hearings Examiner Andrew Kang, and the record closed on the same day. The Complainant, represented and testified for himself; his spouse, Rebekka Schmitt, and father, Donald Schmitt, also testified for the Complainant. Ian Roberts, Consumer Affairs Manager, represented and testified for the Respondent.
7. The warranty expired on November 5, 2017.
8. The buckling ceiling wallpaper and delaminating walls were successfully repaired.
9. The warranty only covers defects arising from the Respondent's manufacture of the vehicle.
10. The warranty expressly excludes third-party manufactured items, normal deterioration, maintenance items, transport, and environmentally caused conditions.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613; TEX. OCC. CODE § 2301.204.
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including

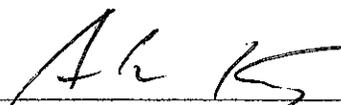
the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. TEX. OCC. CODE § 2301.704.

3. The Complainant filed a sufficient complaint with the Department. 43 TEX. ADMIN. CODE § 215.202.
4. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052; 43 TEX. ADMIN. CODE § 215.206(2).
5. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant's vehicle does not qualify for replacement or repurchase. The Complainant did not prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE §§ 2301.603(a) and 2301.604(a).
7. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranty. TEX. OCC. CODE § 2301.603.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

SIGNED January 8, 2018



ANDREW KANG
HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES